UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/537,689	09/20/2006	Flemming Trap	939-012232-US(PAR)	8438

2512   7590   09/24/2008
PERMAN & GREEN
425 POST ROAD
FAIRFIELD, CT 06824

EXAMINER
HERRERA, DIEGO D

ART UNIT	PAPER NUMBER
2617	

MAIL DATE	DELIVERY MODE
09/24/2008	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE <u>3</u> MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.
- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) ☒ Responsive to communication(s) filed on <u>06 June 2005</u>.

2a) ☐ This action is **FINAL**.   2b) ☒ This action is non-final.

3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) ☒ Claim(s) <u>1-20</u> is/are pending in the application.

  4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5) ☐ Claim(s) _____ is/are allowed.

6) ☒ Claim(s) <u>1-20</u> is/are rejected.

7) ☐ Claim(s) _____ is/are objected to.

8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) ☒ The specification is objected to by the Examiner.

10) ☒ The drawing(s) filed on <u>06 June 2005</u> is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.

  Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

  Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

  a) ☐ All   b) ☐ Some *   c) ☒ None of:

   1. ☒ Certified copies of the priority documents have been received.

   2. ☐ Certified copies of the priority documents have been received in Application No. _____.

   3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

  * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO/SB/08)
  Paper No(s)/Mail Date _____.

4) ☐ Interview Summary (PTO-413)
  Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Priority

Acknowledgment is made of applicant's claim for foreign priority based on an application filed in 10/537689 on 9/20/2006. It is noted, however, that applicant has not filed a certified copy of the PCT/EP02/14646 application as required by 35 U.S.C. 119(b).

Information Disclosure Statement

The information disclosure statement (IDS) submitted on 9/20/2006 was filed. The submission is in compliance with the provisions of 37 CFR 1.97. Accordingly, the information disclosure statement is being considered by the examiner.

Specification

The disclosure is objected to because it contains an embedded hyperlink and/or other form of browser-executable code. Applicant is required to delete the embedded hyperlink and/or other form of browser-executable code. See MPEP § 608.01.

Response to Amendment

Claims 4, 6-10, 14, and 16-20 have been amended.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for

all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

The factual inquiries set forth in *Graham* **v.** *John Deere Co.*, 383 U.S. 1,

148 USPQ 459 (1966), that are applied for establishing a background for

determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 1-20 are rejected under 35 U.S.C. 103 (a) as being unpatentable

over Birkler et al. (US 20020129103 A1), and in view of Daniell et al. (US

20040158609 A1).

Regarding claim 1. Birkler et al. discloses a mobile communications terminal

(title, abstract, fig. 1-3, ¶: 5, 7-9, 17-19, Birkler et al. teaches a mobile terminal

client working in a 2G/3G wireless network), comprising:

Means responsive to the commencement of an activity or the running of an

application for adjusting an availability setting (abstract, title, fig. 1-10, ¶: 21, 22,

Birkler et al. teaches means for adjusting from server update; determination is

made as to whether an update is necessary or required), However, Birkler et al.

does not discloses the adjusting an availability setting, nonetheless, Daniell et al.

teaches adjusting means of availability setting on mobile device (abstract, ¶: 36-41, 87, 89, Daniell et al. teaches and shows adjusting availability of user in session application). Therefore it would have been obvious to a person of ordinary skill in the art at the time the invention was made to specifically include adjusting availability setting from mobile device, as taught by Daniell et al. for the purposes of having nearly or instant messaging available (¶:1).

Means for reporting the adjusted availability setting to or via a network (title, abstract, fig. 1-10, ¶: 17-23, Birkler et al. teaches mobile terminal and server have an update response/request protocol for instant messaging system).

Regarding claim 11. Birkler et al. discloses a method of setting an availability setting relating to a mobile communications terminal (title, abstract, fig. 1-3, ¶: 5, 7-9, 17-19, Birkler et al. teaches a mobile terminal client working in a 2G/3G wireless network), the method comprising:

detecting the commencement of an activity or the running of an application (abstract, title, fig. 1-10, ¶: 21, 22, Birkler et al. teaches means for adjusting availability setting from server from mobile; determination is made as to whether an update is necessary or required); and

in response to a detection:

However, Birkler et al. does not discloses the adjusting an availability setting, nonetheless, Daniell et al. teaches adjusting means of availability setting on mobile device (abstract, ¶: 36-41, 87, 89, Daniell et al. teaches and shows adjusting availability of user in session application). Therefore it would have been obvious to a person of ordinary skill in the art at the time the invention was

made to specifically include adjusting availability setting from mobile device, as

taught by Daniell et al. for the purposes of having nearly or instant messaging

available (¶:1).

reporting the adjusted availability setting to or via a network (title, abstract, fig. 1-

10, ¶: 17-23, Birkler et al. teaches mobile terminal and server have an update

response/request protocol for instant messaging system).

Consider claim 2. A terminal as claimed in claim 1, Daniell et al. discloses in

which the adjusting means is arranged to adjust the availability setting depending

on the identity of the application or the activity (¶: 36-42, 62-65, 89, Daniell et al.

teaches adjust availability setting).

Consider claim 3. A terminal as claimed in claim 2, Daniell et al. discloses in

which the availability setting associated with at least one application or activity is

user definable (fig. 8; ¶: 36-42, 62-65, 89, Daniell et al. teaches adjust availability

setting).

Consider claim 4. A terminal as claimed in claim 1, Daniell et al. discloses

wherein the adjusting means is arranged to adjust the availability setting

depending on a selected operating profile of the terminal (fig. 7-8, ¶: 87-90,

Daniell et al. discloses means selecting operation and setting availability status).

Consider claim 5. A terminal as claimed in claimed 4, Daniell et al. discloses in

which the availability setting associated with at least one operating profile is user

definable (¶: 36-41, 62-65, 78-90, Daniell et al. teaches user setting availability

means).

Consider claim 6. A terminal as claimed in claim 2, Daniell et al. discloses in

which the adjusting means is arranged to adjust the availability setting to the

highest one of a setting associated with the run application or the commenced

activity and a setting associated with the selected operating profile (¶: 62-65,

Daniell et al. teaches different levels of availability having one setting being the

highest of them all for an application status level).

Consider claim 7. A terminal as claimed in 1, Daniell et al. discloses in which

the adjusting means is responsive to the ending of the activity or the ceasing of

the running of the application to restore the availability setting to its previous

setting (fig. 8-14b, abstract, ¶:62, 70, 89-97, Daniell et al. teaches different

modes of availability including that of "offline" or "not available" and cessation of

session of chat which would be different than the previous setting).

Consider claim 8. A terminal as claimed in claim 1, Daniell et al. discloses

comprising means for allowing a user to define a different availability setting for a

predetermined network user or a group of network users to a setting associated

with other users (¶: 36-41, 62, 87, Daniell et al. teaches different groups and

setting changing availability).

Consider claim 9. A terminal as claimed in claim 1, Daniell et al. discloses

comprising means for queuing one or more communications received in

contravention of an availability setting without revealing the one or more

communications to the user (¶: 36-41, 62, 64-65, Daniell et al. teaches

contravention means by queuing one or more communications to mobile device

of user receiving such that user is unaware until the user access the account).

Consider claim 10. A terminal as claimed in claim 1, Daniell et al. discloses

comprising means responsive to the receipt of a communication in contravention of an availability setting for automatically sending a reply communication (¶: 62, 64-65, Daniell et al. teaches contravention means by queuing one or more communications to mobile device of user receiving such that user is unaware until the user access the account, the user is able reply by means of the email received or by any other means the user has available at hand such that the user communicates with the one or more communicants).

Consider claim 12. Method as claimed in claim 11, Daniell et al. discloses in which the adjusting step includes adjusting the availability setting depending on the identity of the application or the activity (¶: 36-42, 62-65, 89, Daniell et al. teaches adjust availability setting).

Consider claim 13. A method as claimed in claim 12, Daniell et al. discloses in which the availability setting associated with at least one application or activity is user definable (fig. 8; ¶: 36-42, 62-65, 89, Daniell et al. teaches adjust availability setting).

Consider claim 14. A method as claimed in claim 11, Daniell et al. discloses in which the adjusting step includes adjusting the availability setting depending on a selected operating profile of the terminal (fig. 7-8, ¶: 87-90, Daniell et al. discloses means selecting operation and setting availability status).

Consider claim 15. A method as claimed in claim 14, Daniell et al. discloses in which the availability setting associated with at least operating profile is user definable (¶: 36-41, 62-65, 78-90, Daniell et al. teaches user setting availability means).

Consider claim 16. A method as claimed in claim 12, Daniell et al. discloses in which the adjusting step comprises adjusting the availability setting to the highest one of a setting associated with the one application or the commenced activity and a setting associated with the selected operating profile (¶: 62-65, Daniell et al. teaches different levels of availability having one setting being the highest of them all for an application status level).

Consider claim 17. A method as claimed in claim 11, Daniell et al. discloses comprising detecting the ending of the activity or the ceasing of the running of the application, and in response to a detection restoring the availability setting to its previous setting (fig. 8-14b, abstract, ¶:62, 70, 89-97, Daniell et al. teaches different modes of availability including that of "offline" or "not available" and cessation of session of chat which would be different than the previous setting).

Consider claim 18. A method as claimed in claim 11, Daniell et al. discloses comprising allowing a user to define a different availability setting for a predetermined network user or a group of network users to a setting associated with other users (¶: 36-41, 62, 87, Daniell et al. teaches different groups and setting changing availability).

Consider claim 19. A method claimed in claim 11, Daniell et al. discloses comprising queuing one or more communications received in contravention of an availability setting without revealing the one or more communications to the user (¶: 62, 64-65, Daniell et al. teaches contravention means by queuing one or more communications to mobile device of user receiving such that user is unaware until the user access the account).

Consider claim 20. A method as claimed in claim 11, Daniell et al. discloses comprising automatically sending in response to the receipt of a communication in contravention of an availability setting a reply communication (¶: 62, 64-65, Daniell et al. teaches contravention means by queuing one or more communications to mobile device of user receiving such that user is unaware until the user access the account, the user is able reply by means of the email received or by any other means the user has available at hand such that the user communicates with the one or more communicants).

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to DIEGO HERRERA whose telephone number is (571)272-0907. The examiner can normally be reached on Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lester Kincaid can be reached on (571) 272-7922. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from

the Patent Application Information Retrieval (PAIR) system. Status information

for published applications may be obtained from either Private PAIR or Public

PAIR. Status information for unpublished applications is available through

Private PAIR only. For more information about the PAIR system, see http://pair-

direct.uspto.gov. Should you have questions on access to the Private PAIR

system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-

free). If you would like assistance from a USPTO Customer Service

Representative or access to the automated information system, call 800-786-

9199 (IN USA OR CANADA) or 571-272-1000.

/Diego Herrera/
Examiner, Art Unit 2617

/Lester Kincaid/
Supervisory Patent Examiner, Art Unit 2617